

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

KALIN THANH DAO,
Petitioner,

VS.

JOE KEFFER, Warden,
FMC-Carswell,
Respondent.

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CIVIL ACTION NO.4:11-CV-145-Y

ORDER ADOPTING
MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

In this action brought by petitioner Kalin than Dao under 28 U.S.C. § 2241, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on July 5, 2011; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on July 20, 2011.¹

The Court, after **de novo** review, concludes that Petitioner's objections must be overruled,² that, for the reasons stated in the magistrate judge's findings and conclusions, Respondent's motion to dismiss must be granted, and the petition for writ of habeas corpus under 28 U.S.C. § 2241 should be dismissed for lack of jurisdiction.

¹On July 20, 2011, Kalin Thanh Dao filed a document entitled "Response" to the magistrate judge's report, which is construed objections to that report. As

²In her objections, Dao requests the Court to construe her petition under § 2241 as a motion under § 2255 and transfer it to her court of conviction. She contends she will "supplement" a request for § 2255 relief in the court of her conviction after any transfer. But Dao's direct appeal of her conviction was just resolved on May 6, 2011. *United States v. Dao*, No.10-1660, 2011 WL 1743881 (8th Cir. May 6, 2011). Because this Court lacks jurisdiction, and because Dao is not foreclosed from filing a motion under 28 U.S.C. § 2255 in the Court of her conviction to include all of her grounds for relief, this case will not be transferred. Dao's objection is overruled.

Therefore, the findings, conclusions, and recommendation of the magistrate judge are ADOPTED,

Respondent Keffer's motion to dismiss (doc. 6) is GRANTED.

Kalin Thanh Dao's petition for writ of habeas corpus under 28 U.S.C. § 2241 is DISMISSED for lack of jurisdiction.

SIGNED August 9, 2011.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE